

5500 - SEXUALLY ORIENTED COMMERCIAL ESTABLISHMENT

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5510 - Distance Separation Required

A person commits an offense if he operates or causes to be operated within 1,000 feet of a church, a public or private elementary or secondary school, a United States military installation which contains a training school for armed forces members, a residential dwelling unit in which one or more persons maintain a residence, a public park, or another business of a type hereinafter enumerated in this section, a business of one of the following types:

- A. An adult bookstore as hereinafter defined.
- B. An adult motion picture theater as hereinafter defined.
- C. A business or enterprise which offers for a consideration nude human modeling.
- D. A business or enterprise that offers for a consideration physical contact between persons when one or more of such persons are nude or semi-nude.
- E. A bar, nightclub or other similar commercial establishment that offers as entertainment, for the purpose of providing sexual stimulation to the customers of such establishment, live performances by a person or persons who expose specified anatomical areas or who perform specified sexual activities.
- F. An adult arcade as hereinafter defined.
- G. An adult motel as hereinafter defined.
- H. An adult theater as hereinafter defined.
- I. An escort agency as hereinafter defined.

For the purposes of this section, distances shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building used as a business or enterprise enumerated in this subsection to the nearest portion of the building used by another business or enterprise so enumerated or to the nearest property line of the premises of a church, a public or private elementary or secondary school, a United States military installation on which is located a school for training armed forces members, or public park, or to the nearest portion of a building used as a residential dwelling unit in which one or more persons maintain a residence.

5520 - Exception to 5510, C

It shall be a defense to prosecution under subsection C above that the business or enterprise is one of the following:

- 1. A proprietary school licensed by the State of Texas.
- 2. A college, junior college or university supported entirely or partly by taxation.
- 3. A private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.

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5530 - Sexually Oriented Commercial Establishment Defined

When used in this section, the following words shall have the following meanings:

- A. *Adult bookstore.* An establishment which as one of its primary business purposes offers for sale, rental or trade for any form of consideration books, magazines, periodicals or other printed materials, photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual reproductions which are distinguished or characterized by an emphasis on matters depicting, describing or related to "specified sexual activities" or "specified anatomical areas"; or instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activity" or which depict "specified anatomical areas".
- B. *Adult motion picture theater.* A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are distinguished or characterized by an emphasis on "specified sexual activity" or the exposure of "specified anatomical areas."
- C. *Specified sexual activities:*
 - 1. Human genitals in a state of sexual stimulation or arousal;
 - 2. Sex acts, normal or perverted, actual or simulated, including intercourse, masturbation, oral copulation, or sodomy;
 - 3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breasts;
 - 4. Excretory functions as part of or in conjunction with any of the activities set forth in 1. through 3. above.
- D. *Specified anatomical areas.*
 - 1. Less than completely and opaquely covered:
 - (a) Human genitals, pubic region;
 - (b) Buttocks; and
 - (c) Female breasts below a point immediately above the top of areola; and
 - 2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- E. *Semi-nude.* A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breasts, as well as portions of the body covered by supporting straps or devices.
- F. *Adult arcades.* Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."
- G. *Adult motels.* A motel, hotel, or similar commercial establishment which:
 - 1. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" and which has a sign visible from a public right-of-way which advertises the availability of this type of photographs; or
 - 2. Offers a sleeping room for rent for a period of time that is less than ten hours; or

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3. Allows a tenant or an occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.
- H. *Adult theaters.* A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are distinguished or characterized by an emphasis on "specified sexual activities" or the exposure of "specified anatomical areas".
- I. *Escort.* A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who, for consideration, agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- J. *Escort agency.* A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

5540 - Penalty For Violation

A person who violates a provision of this section is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued or permitted, and each offense is punishable by a fine not to exceed \$2,000.00.

5550 - Severability Clause

If any provision or portion of this section is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining portions of the section.

5560 - Conditional Use Permit Required

No person shall operate a business of the type described in section 5510 without a conditional use permit authorizing such operation. The director of community development shall provide the necessary forms, and shall establish the procedures for the application for and issuance of such permits. Such permits shall be issued by the director of community development, for which a fee as approved by the city council shall be charged.